

Criminal Assets Bureau

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Commissioner,

It is my pleasure to present to you the eighth annual report of the Criminal Assets Bureau which covers the calendar year 2003. The report is sent to you under Section 21 of the Criminal Assets Bureau Act 1996 for onward submission to the Minister for Justice Equality and Law Reform.

As in previous years, the Bureau carried out its statutory functions to identify assets which derive from criminal activity and to deny those engaged in that activity the benefit of those assets. The Bureau targeted the assets deriving from drug trafficking and also assets which derived from corruption, international VAT carousel fraud and smuggling.

In addition, Bureau continued to play a major part in the strategic response, co-ordinated by the National Support Services of An Garda Síochána, to organised criminal activity in this country.

During 2003 the Bureau saw an increase in the number of visitors it received from other countries and in particular from the new member states of the European Union. The Bureau welcomes this involvement with these jurisdictions as international co-operation is of critical importance in the targeting of assets which derive from criminal activity. Together with Europol the Bureau has continued the development of international co-operation in tracing the proceeds of criminal activity.

The Bureau welcomes the establishment of the Assets Recovery Agency in Belfast and London and the Civil Recovery Unit in Edinburgh and we look forward to working closely with them. The Bureau has also worked in close association with An Garda Síochána, the Revenue Commissioners, the Police Service of Northern Ireland, and HM Customs and Excise in the continuing cross-border operation to tackle organised crime.

The Bureau was fortunate to have access to the expert services of the members of the Bar of Ireland. The support received from them and from the Chief State Solicitor and his staff is very much appreciated.





We also saw the replacement of Mr Barry Galvin by Mr Richard Barrett as Bureau Legal Officer. Appointed at its inception and having been intimately involved in its establishment, Barry's expertise, and his commitment and dedication to the implementation of the Bureau's statutory remit must be recorded and recognised. I am sure you will join with me and the other members of the Bureau in wishing him well in the future.

The Bureau is ever-dependent on the receipt of information from a variety of sources, including the general public and I acknowledge their continued support throughout 2003.

In conclusion I would like to avail of this opportunity to record my appreciation for the dedication, professionalism and commitment of the Bureau Officers and staff throughout 2003. We look forward to continuing the work of the Bureau in targeting the proceeds of criminal activity.

Yours sincerely,

Detective Chief Superintendent
F J MCKENNA
CHIEF BUREAU OFFICER
11 MAY 2004



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Criminal Assets Bureau

Annual Report

2003

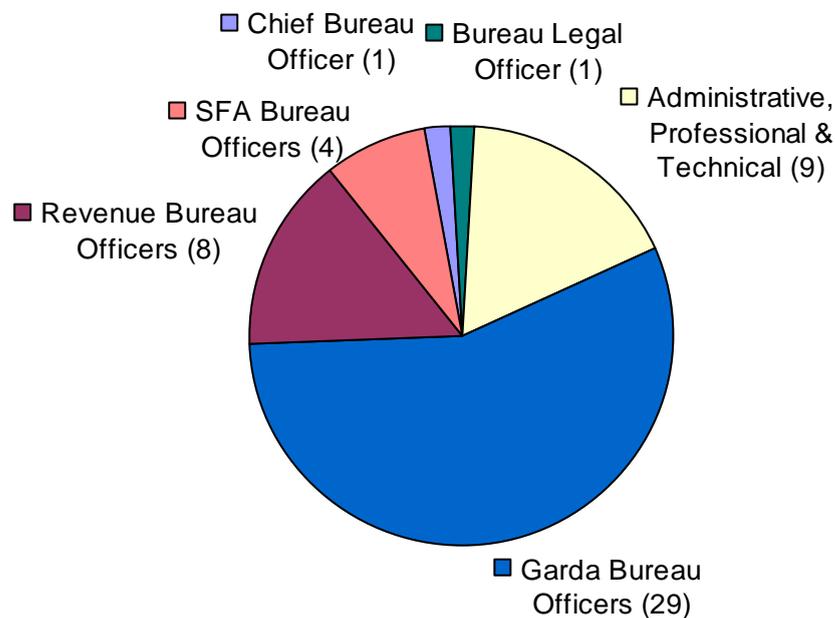
Chapter 1

Introduction

- 1.1 This, the eighth annual report of the Criminal Assets Bureau (the Bureau), is submitted to the Minister for Justice, Equality and Law Reform, through the Commissioner of An Garda Síochána pursuant to Section 21 (1) of the Criminal Assets Bureau Act 1996, (the Act).
- 1.2 The report covers the operations and work of the Bureau in the period 1 January 2003 to 31 December 2003 and unless otherwise mentioned, all the action reported on occurred in that period.
- 1.3 The Bureau was established by the Act in 1996 and since then it has pursued its statutory objectives and carried out its statutory functions. These statutory objectives and functions are set out in Appendix 1 along with the details of the statutory structure of the Bureau.

1.4 The total number of Bureau Officers and staff in the Bureau as of 31 December 2003 was 52. Chart 1 gives the breakdown of these personnel in their relevant areas of expertise.

Chart 1: Bureau Officers and Staff



1.5 A Principal Solicitor, a State Solicitor, two Legal Executives and two Clerical Officers have been assigned to the Bureau during 2003 by the Chief State Solicitor to provide the necessary legal services to the Bureau.

Chapter 2

Finance

2.1 Section 19 of the Act allows the Oireachtas, through the Minister for Finance and Justice Equality & Law Reform, to make monies available for the purpose of expenditure by the Bureau in the performance of its functions.

2.2 A breakdown of expenditure during 2003 is provided in Table 1.

Table 1:

Accounts for the period 1 January 2003 to 31 December 2003

Monies provided by the Oireachtas		€ 5,711,000
Expenditure		
Pay	3,829,000	
Non Pay	1,882,000	
	5,711,000	5,711,000

2.3 The terms of the Prompt Payment of Accounts Act 1997 were fully complied with by the Bureau during the year.

Chapter 3

Actions by the Bureau

- 3.1 During 2003 the Bureau was fully committed to carrying out its statutory functions and to achieving its statutory objectives. The Bureau continued to use all the available remedies and sanctions at its disposal in identifying criminal assets and depriving persons of the benefit of such assets.
- 3.2 Section 14 of the Act was utilised in obtaining search warrants which assisted investigations into assets which were suspected to be the proceeds of criminal activity.
- 3.3 In addition to the above, orders under Section 63 of the Criminal Justice Act 1994 were obtained to access material in relation to assets where a suspicion of drug trafficking and /or money laundering existed.

3.4 Table 2 sets out the numbers of these warrants and orders.

Table 2:

Number of warrants and orders obtained in 2003

	Number
Warrants obtained under Section 14, Criminal Assets Bureau Act 1996	116
Orders under Section 63, Criminal Justice Act 1994	169

3.5 Court proceedings under the Proceeds of Crime Act 1996, the Taxes Acts and the Social Welfare Acts were initiated by the Bureau during the year, again with the objective of depriving persons of the proceeds of criminal activity.

3.6 This was in addition to proceedings which had been instituted in previous years and which were before the courts in 2003.

3.7 Co-operation with other agencies is a critical factor in the success of the operation of the Bureau. In particular co-operation with An Garda Síochána (both national and local units), the Revenue Commissioners and the Department of Social and Family Affairs is fundamental to the Bureau's continued operation. This co-operation also extends to the other statutory bodies in Ireland, the financial services industry and law enforcement agencies from other jurisdictions.

Proceeds of Crime Applications

- 3.8 The High Court may make, on application by the Chief Bureau Officer, an order under Section 2 of the Proceeds of Crime Act 1996, which will prohibit dealing with or otherwise disposing of or diminishing the value of property which can be shown, on the civil standard of proof, to be the proceeds of crime and which has a value of not less than €13,000.
- 3.9 Orders under Section 3 of the Proceeds of Crime Act 1996, are applied for within 21 days of the granting of a Section 2 order. If this is granted the specified property is 'frozen' for a period of seven years unless the Court is satisfied that all or part of the property is not the proceeds of crime.
- 3.10 In association with local Drug Investigation Units and with the support of the general public, the Bureau conducted a number of investigations into the assets, which derived from criminal activity, of the "middle-men" of organised crime groups. As a result of these investigations applications were made to the High Court under the Proceeds of Crime Act to freeze these assets.

3.11 The Proceeds of Crime Act 1996 also provides for a receivership order under Section 7 of that act. The Bureau Legal Officer was appointed receiver in 9 such cases covering sums of money and other personal property.

3.12 Under directions from the High Court the receiver completed the sale of assets which were the subject of orders under Section 7 of the Proceeds of Crime Act 1996. Some of these orders were obtained in the year under review and some were obtained in previous years.

3.13 The numbers and value of orders obtained under Section 2, 3 and 7 are shown in Table 3.

Table 3:

Orders obtained under the Proceeds of Crime Act 1996 in 2003

	No. of Defendants	No. of Orders	Amount	
			€	Stg £
Interim Orders under Section 2	15	11	3,045,842	12,150
Interlocutory Orders under Section 3	6	6	71,699	557,070
Receivership Orders under Section 7	11	9	996,345	569,220

3.14 As no property can vest in the Minister for Finance under the Proceeds of Crime Act 1996 until a period of at least seven years has lapsed from the date of the interlocutory order, it is not possible to forecast with any certainty the value of the assets at that time and the figures quoted are

estimated on current values. The difference in amounts is reflected in the fact that in a number of cases where interim orders were in place, interlocutory orders had been applied for but were still pending before the High Court as of 31 December 2003.

3.15 The amounts realised by receiverships, which include the proceeds of the sale of property by the receiver and amounts standing to credit in financial institutions, are shown in table 4. The total number of receivership orders and amounts realised from those receiverships since the enactment of the Criminal Assets Bureau Act 1996 are also shown. The interest accrued on amounts recovered by the receiver in previous years is included in the 2003 total.

Table 4: Amounts realised by receiverships as of 31 December 2003

<i>Year</i>	<i>Number</i>	<i>Value</i>		
		€	Stg £	US\$
2003	9	1,002,126	441,794	21,669
2002	9	1,369,425	1,997,649	5,422,553
2001	15	1,222,810	180,541	228,000
2000	6	1,613,075	11,787	2,433
1999	2	501,068	9,407	1,400
1998	5	410,718	104,743	77,678
1996/1997	8	851,312	193,040	0
Total		6,970,534	2,938,961	5,753,733

3.16 Arising from Bureau investigations, two of the applications under the Proceeds of Crime Act 1996 were discharged, under High Court consent, with the respondents abandoning the sums involved for the benefit of the central fund. In compliance with its statutory functions, the Bureau submitted these funds (€82,437) to the Minister for Finance.

Revenue Actions

3.17 The Act also provides the Bureau with the necessary powers to apply the Taxes Acts to the proceeds of criminal activity or suspected criminal activity. The use of these powers by the Bureau, including the provisions of the Disclosure of Information for Taxation and Other Purposes Act 1996, constitute a very effective means to allow it to carry out its statutory functions and to deprive those engaged in criminal activity of their ill-gotten gains.

3.18 Throughout 2003 and as a result of detailed investigations into the financial affairs of those suspected to be engaged in criminal activity, the Bureau applied the provisions of the Taxes Acts to a number of individuals and companies. In some cases tax collection enforcement proceedings were instituted to recover the taxes due and the Bureau instituted recovery proceedings where assessments to tax had been raised on individuals and companies in earlier years. Some investigations by the Bureau were concluded by

way of settlement, including court consents, providing for the payment of tax and interest (and in some cases penalties). In some of these cases, the terms of the settlements provided for the sale of lands and other assets.

- 3.19 Bureau Officers conducted a number of criminal investigations into Revenue offences which were discovered in the course of Bureau enquiries. One individual was convicted on Revenue offences before Dublin Circuit Court, fined and sentenced to two years imprisonment. On appeal to the Court of Criminal Appeal the sentence was reduced to six months. In Limerick District Court an individual and a limited company of which the individual was a director were convicted on Revenue and Social Welfare offences. The individual was sentenced to eight months imprisonment. That sentence was reduced to six months on appeal before the Circuit Court.
- 3.20 Six other individuals were charged with offences under the Taxes Acts and the Waiver of Certain Tax, Interest and Penalties Act 1993 during the year as a result of Bureau investigations. Two of these individuals entered guilty pleas and are awaiting sentencing and four are awaiting trial as of 31 December 2003.

- 3.21 Bureau Officers who are also officers of the Revenue Commissioners raised assessments to tax on 23 people during 2003. Appeal applications were received from fifteen people and two had their appeal applications rejected for failing to comply with the relevant provisions of the Taxes Acts. Neither of these individuals appealed the refusal to the Office of the Appeal Commissioners.
- 3.22 The Appeal Commissioners, examining cases handled by the Bureau, determined the tax liability of three people during the course of the year. While a slight downward adjustment was made in one case the assessments were upheld in the other two cases. The Appeal Commissioner's determination was challenged in one of these cases by way of Circuit Court appeal. That case was subsequently settled by agreement.
- 3.23 Judges of the Circuit Court exercising the appellate jurisdiction vested in them by the Taxes Acts heard and made determinations in two other Bureau cases in hand since the previous year.
- 3.24 All available legal remedies, including statutory remedies under the Taxes Acts, were utilised by the Bureau in the collection of taxes. In particular the Bureau rigorously applied tax enforcement procedures including the use of attachment orders against the financial assets of

defaulters and the institution of High Court proceedings to recover the taxes due.

3.25 The following tables give details of Revenue actions including the amounts of taxes assessed, demanded and collected during the course of 2003.

Table 5:
Tax assessed

	€
Income Tax	4,261,394
Capital Gains Tax	4,600
Value Added Tax	3,063,457
Employer's PAYE/PRSI	75,663
Total	7,405,114

Table 6:
Tax and interest demanded

	€
Income Tax	6,825,897
Value Added Tax	370,044
Employer's PAYE/PRSI	2,331
Total	7,198,272

Table 7:
Tax and interest collected

	€
Income Tax	8,253,249
Corporation Tax	1,252,285
Capital Gains Tax	77,100
Value Added Tax	317,282
Employer's PAYE/PRSI	91,106
Total	9,991,022

Table 8:
High Court proceedings instituted for recovery of tax & interest

	Number	€
Proceedings commenced by Summons	11	11,151,073
Judgements obtained (excluding costs)	6	2,623,072

Table 9:
Cases in which tax was recovered using Revenue powers of attachment

Number of cases	8
Tax & interest recovered	€ 344,647

Social Welfare Actions

- 3.26 Section 5 (1) (c) of the Act provides for the taking of all necessary actions by the Bureau under the Social Welfare Acts for the investigation and determination, as appropriate, of any claim for or in respect of benefit (within the meaning of Section 204 of the Social Welfare (Consolidation) Act 1993) by any person engaged in criminal activity.
- 3.27 Section 5 (1) (d) of the Act provides for the investigation and determination, as appropriate, at the request of the Minister for Social and Family Affairs, of any claim for or in respect of such benefit where the Minister for Social and Family Affairs certifies that there are reasonable grounds for believing that, in the case of a particular investigation, officers of the Minister may be subject to threats or other forms of intimidation.
- 3.28 Arising from investigations by Bureau Officers who are also officers of the Minister for Social and Family Affairs, a number of Social Welfare payments were terminated in 2003 resulting in annual savings to the Exchequer as set out at Table 10.

Table 10:
Social Welfare savings by scheme type

Scheme Type.	Savings to Exchequer. €
Unemployment Assistance.	49,655
One Parent Family Payment.	59,999
Total	109,654

3.29 There were a number of appeals lodged with the Social Welfare Appeals Office against decisions made by Bureau Officers during 2003. None of these appeals were pursued by the appellants to the Circuit Court.

3.30 As indicated in paragraph 3.18 above, a limited company was successfully convicted and fined on Social Welfare offences before Limerick District Court. The company principal was convicted on similar charges before Limerick District Court and was sentenced to eight months imprisonment. That sentence was reduced to six months on appeal to the Circuit Court.

3.31 In other cases the Bureau identified a number of overpayments of assistance, details of which are set out in Table 11.

Table 11:**Social Welfare overpayments by scheme type**

Scheme Type.	Overpayment Assessed. €
Unemployment Assistance.	357,236
One Parent Family Payment.	92,639
Disability Allowance.	55,031
Old Age Pension	13,979
Total	518,885

3.32 The recovery of monies, in respect of benefits which were deemed to have been improperly paid, during 2003, was effected as per Table 12.

Table 12:**Social Welfare recovery of monies by scheme type**

Scheme Type.	Amount Recovered. €
Unemployment Assistance.	156,708
One Parent Family Payment.	27,408
Disability Allowance.	1,608
Old Age Pension	13,979
Total	199,703

3.33 A summary summons was issued in one case during 2003 for recovery of monies deemed to have been paid on foot of improper claims. These proceedings were not finalised as of 31 December 2003. A settlement was reached in respect of a case for which a summary summons issued in 2002.

Chapter 4

Legal Issues

- 4.1 During the year under review the procedural implications of the decision of the Supreme Court in the F case (referred to in the Annual Report for 2002) became apparent. The Supreme Court had decided that the Section 3 “interlocutory” application, under the Proceeds of Crime act 1996, was a substantive trial. This has resulted in some procedural duplication with applications by motion for Section 3 relief running in parallel with plenary proceedings with full pleadings seeking the same relief.
- 4.2 A number of issues were considered and decided upon by the High Court and Supreme Court in relation to aspects of the Bureau’s work. The most significant case was a tax case entitled Criminal Assets Bureau –V- H & H in which judgement was delivered by the Supreme Court on the 19th March 2003. In this case a Mareva injunction had been obtained by the Bureau in 1999 on foot of tax assessments. However the Supreme Court held that as the tax assessments had not become “final and conclusive” at the time the case was initiated, and no formal demand had been made, the proceedings were premature. The court also decided that when revenue debts are final and conclusive and duly demanded they can be enforced by plenary summons and not only by summary summons. As a result of this

decision sums already frozen by the injunction were released.

- 4.3 The same appeal rejected the appellant's submission that the Bureau was only entitled to institute proceedings in pursuance of its statutory objectives under Section 4 of the Criminal Assets Bureau Act 1996 where the assets were derived from criminal activity. The court stated that one of the functions of the Bureau is to ensure that the proceeds of "suspected criminal activity" are subjected to tax and that such action could be taken where suspicion of such criminal activity was reasonably entertained by Bureau Officers.
- 4.4 The same appeal also clarified that the provisions of Section 8(5) of the Criminal Assets Bureau Act 1996 did not set aside existing rules on the admissibility of documents to prove their contents. This finding has required a reassessment by the Bureau of how it will present evidence in future proceedings.
- 4.5 There were two significant written judgements from the President of the High Court in cases under the Proceeds of Crime Act 1996 during the year under review. In the case of McKenna –V- M and others (12/2/2003) the court decided that service outside the jurisdiction of a civil summons by a member of the Garda Síochána is good service and

not in breach of any principle of international law. The court also decided that it had power to order service out of the jurisdiction of proceedings claiming relief under Section 3 of the Act.

- 4.6 In the same case the court decided that the Proceeds of Crime Act 1996 can apply where the defendant is out of the jurisdiction or where the offences relied upon were committed out of the jurisdiction or where both of these circumstances apply. The court also decided that the Statute of Limitations Act 1957 did not apply to proceedings under the Proceeds of Crime Act 1996.
- 4.7 Similar issues arose in the case of McKenna –V- F & F (24/2/2003). Here the President of the High Court followed his earlier decision in relation to the application of the Statute of Limitations Act 1957 and the application of the Proceeds of Crime Act 1996 in the case of offences committed outside the jurisdiction. Both of these issues remain under review and are the subject of appeals to the Supreme Court.
- 4.8 The F & F case also decided that it is legally unnecessary for the Chief Bureau Officer to rely upon specific crimes, or to relate specific items of property sought to be restrained by orders under the Proceeds of Crime Act 1996 to the commission of specific crime, and that the Chief

Bureau Officer can make a sufficient case by relying on his opinion and belief under Section 8 of the Act that the property was acquired in whole or in part with or in connection with property that directly or indirectly constitutes the proceeds of crime. The court found in the Proceeds of Crime Act 1996, a legislative intention that the scheme of the Act should have application in circumstances where the Chief Bureau Officer was unable to show a relationship between the property alleged to be the proceeds of crime and a particular crime or crimes.

4.9 Issues were raised in the same case arising out of the fact that the defendants were family members of a deceased person who is alleged to have been involved in criminal activity. The court expressed the view that the question as to whether such defendants were particularly disadvantaged by that circumstance was one which would have to be addressed in the context of the risk of injustice test at the hearing of the Section 3 issue.

4.10 During the year the Bureau took action in a number of cases involving “white collar crime”, particularly corruption, investment frauds and international VAT carousel frauds. These cases raise complex issues including international legal and judicial co-operation which will continue well beyond the year under review.

Chapter 5

Developments

- 5.1 Seven years have now elapsed since the first freezing order was obtained under Section 3 of the Proceeds of Crime Act 1996. The Bureau has commenced proceedings in the High Court for a disposal order under Section 4 of this Act and the assets in question will be disposed of at the direction of the High Court.
- 5.2 The year also saw an increased number of Bureau investigations into “white collar crime” and corruption. While the two relevant Acts of 1996 are applicable to criminal activity in general they have to date been mostly tested in cases dealing with crimes carried out by “criminal gangs”. The application of the schemes of these Acts to issues more usually found in the area of commercial law requires further legal analysis.
- 5.3 The Bureau continued to assist authorities from other states during the year under review. That assistance took the form of active co-operation in particular investigations as contemplated by the Act and it also involved broader discussion with foreign agencies and authorities

who are interested in studying the work of the Bureau for possible use in their own circumstances. In that context the Bureau received visiting delegations from countries in Africa and Eastern Europe during the year under review. Some members of the Bureau staff were also engaged in a project sponsored by the European Commission for the raising of awareness in relation to money laundering and asset seizure issues among the new accession States to the European Union.

5.4 The Bureau was pleased to see the establishment early in 2003 of the Assets Recovery Agency in London and Belfast, and the Civil Recovery Unit in Edinburgh, pursuant to the United Kingdom Proceeds of Crime Act 2002. The Bureau looks forward to working with these new agencies. It is the experience of the Bureau that an increasing number of its cases have cross-jurisdictional angles which require joint investigation and co-operation among different jurisdictions.

5.5 Working with Europol and in conjunction with other member states, the Bureau continued to develop international co-operation under the CARIN (Camden Assets Recovery Inter-agency Network) initiative. This involved the establishment of an informal network of law enforcement asset recovery agencies across the European Union.

Chapter 6

Conclusion

- 6.1 The Bureau continued to pursue its statutory objectives and carry out its statutory functions by applying the benefits of the multi-agency approach to identifying the proceeds of crime and taking appropriate action to deprive criminals and their associates of the benefits of such assets.
- 6.2 The multi-agency ethos continued to be a significant factor in work of the Bureau. This was augmented by the ever greater sense of partnership between law enforcement agencies and financial institutions in the effort to target the proceeds of criminal activity.
- 6.3 The nature and scope of the operational and legal activities of the Bureau are being constantly reviewed and expanded to meet the changing methods employed by persons seeking to hide the proceeds of their criminal activity. For example there has been an increase in the trend of criminals moving large amounts of cash to other jurisdictions to avoid seizure. This highlights the continued importance of co-operation with the international law enforcement community.

Appendix 1

Statutory Remit - Objectives and Functions

1. The Bureau was established under statute and Section 4 of the Criminal Assets Bureau Act 1996 sets out the **objectives** of the Bureau as follows:-

"(a) the identification of the assets, wherever situated, of persons which derive or are suspected to derive, directly or indirectly, from criminal activity,

(b) the taking of appropriate action under the law to deprive or to deny those persons of the assets or the benefit of such assets, in whole or in part, as may be appropriate, and

(c) the pursuit of any investigation or the doing of any other preparatory work in relation to any proceedings arising from the objectives mentioned in *paragraphs (a) and (b).*"

2. Section 5 of the Act sets out the **functions** of the Bureau as follows:-

"(1) Without prejudice to the generality of *section 4*, the functions of the Bureau, operating through its

bureau officers, shall be the taking of all necessary actions-

in accordance with Garda functions, for the purposes of, the confiscation, restraint of use, freezing, preservation or seizure of assets identified as deriving, or suspected to derive, directly or indirectly, from criminal activity,

under the Revenue Acts or any provision of any other enactment, whether passed before or after the passing of this Act which relates to revenue, to ensure that the proceeds of criminal activity or suspected criminal activity are subjected to tax and that the Revenue Acts, where appropriate, are fully applied in relation to such proceeds or activities, as the case may be,

under the Social Welfare Acts for the investigation and determination, as appropriate, of any claim for or in respect of benefit (within the meaning of Section 204 of the Social Welfare (Consolidation) Act 1993) by any person engaged in criminal activity, and

at the request of the Minister for Social Welfare, to investigate and determine, as appropriate, any claim for or in respect of a benefit, within the meaning of Section 204 of the Social Welfare (Consolidation) Act 1993,

where the Minister for Social Welfare certifies that there are reasonable grounds for believing that, in the case of a particular investigation, officers of the Minister for Social Welfare may be subject to threats or other forms of intimidation,

and such actions include, where appropriate, subject to any international agreement, co-operation with any police force, or any authority, being a tax authority or social security authority, of a territory or state other than the State.

In relation to the matters referred to in *subsection (1)*, nothing in this Act shall be construed as affecting or restricting in any way-

the powers or duties of the Garda Síochána, the Revenue Commissioners or the Minister for Social Welfare, or the functions of the Attorney General, the Director of Public Prosecutions or the Chief State Solicitor."

Statutory Structure

3. The officers and members of the staff of the Bureau are appointed on a statutory basis under the relevant sections of the Act as follows:-

Section 7, Chief Bureau Officer;

Section 8, Bureau Officers, being members of An Garda Síochána nominated by the Commissioner, officers of the Revenue Commissioners nominated by the Revenue Commissioners, officers of the Minister for Social and Family Affairs nominated by that Minister;

Section 9, Bureau Legal Officer and professional or technical members of the staff of the Bureau.

4. The powers and functions of the Chief Bureau Officer, Acting Chief Bureau Officer, Bureau Legal Officer, Bureau Officers and where appropriate, members of the staff of the Bureau, are also fully set out at Sections 7, 8 and 9 of the Act.